

# Traditional Cultural Properties, Cultural Resources Management and Environmental Planning

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## Section 106 and Managing Traditional Cultural Properties

Still, concerns about practical matters continue to be raised by federal agencies, private developers and their cultural resources contractors, as well as by various State Historic Preservation Offices. These practical concerns focus on how to identify traditional cultural properties, how they can be evaluated, how to handle the confidentiality of information developed in the course of identifying such places, and how to consult with American Indian tribes about all these issues. To a great extent we think that most of these practical concerns can be addressed by long-range planning, and the development of direct relationships between federal agencies and Indian tribes.

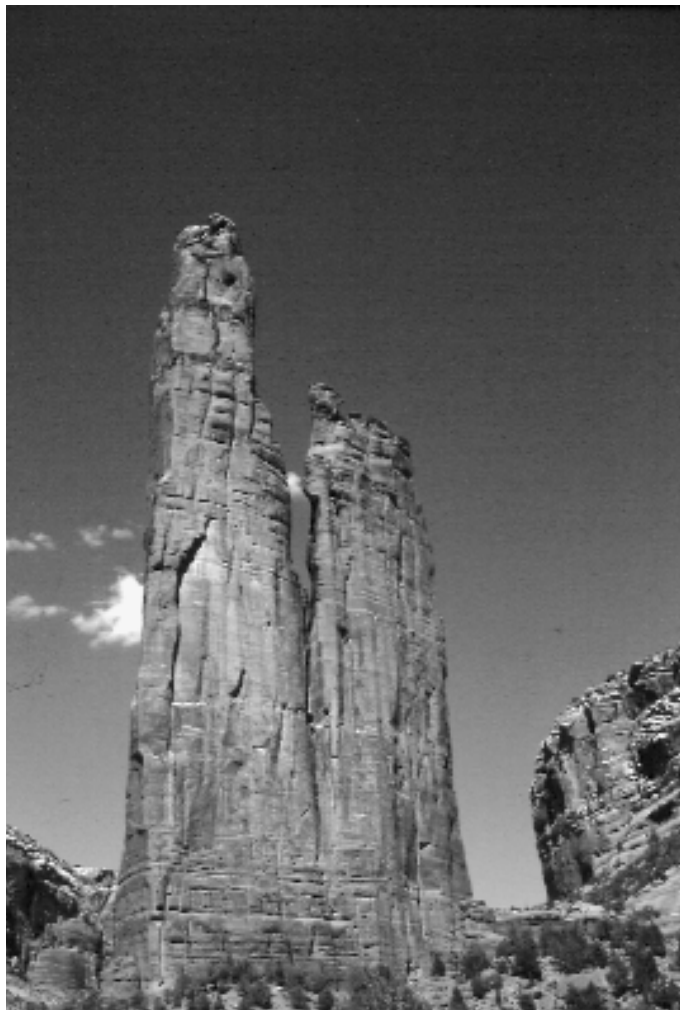
One reason problems with management of traditional cultural properties persist is that, in the context of Section 106, traditional cultural properties continue to be thought of in the same way as archeological sites or historic buildings. Traditional cultural properties must be identified, evaluated and treated during the Section 106 compliance process along with archeological and historic properties. To do so, agency managers require traditional cultural properties to be neatly bounded places. This emphasis derives in part from the National Register's "real estate"

perspective, and from the fact that many cultural resources managers are archeologists, who are trained to deal with spots on the landscape, rather than the landscape itself. In the context of individual undertakings, managers often insist that traditional cultural properties be neatly bounded so that the kinds of management decisions routinely made regarding conventional historic properties can be applied to traditional cultural properties. However, the artificial isolation of important places from the whole landscape of which they are an integral part often violates the very cultural principles that make certain places culturally significant to begin with. Not surprisingly, Navajos (and undoubtedly many other American Indians) have great difficulty in dividing up the physical world in a way that is most comfortable and convenient for cultural resources managers.

As we see it, there are two issues that must be addressed to alleviate some of the practical problems

**T**he cultural resources management community's reaction to the 1990 issuance of National Register Bulletin 38 by the Keeper of the National Register was one of concern, confusion, and, in some instances, outright hostility. While most CRM professionals acknowledged the importance of "traditional cultural properties" (a term we dislike but use for consistency with federal guidelines), most also argue that such places are essentially unmanageable, and that to be asked to do so placed an unfair burden on agencies and cultural resources managers. Many argued that federal involvement in the management of the sacred places of one ethnic group constituted a clear violation of the Constitutional prohibitions against the federal entanglement in religious matters. Some (such as the Bureau of Indian Affairs) simply argue that Bulletin 38 was only a guideline, not a law, and that compliance with it was not mandatory and therefore, unnecessary.

These reactions came as no surprise to those of us working for the Navajo Nation. They were the sorts of things we heard virtually every time we raised concerns regarding protection of places of traditional importance to Navajos. We are glad to note that there has been a positive evolution in the dialogue between most CRM professionals and Indian tribes during the last few years. Most cultural resources managers now accept that traditional cultural properties can be successfully considered in the Section 106 compliance process.



Spider Rock, in Canyon de Chelly on the Navajo reservation, is associated with a number of important cultural traditions among the Navajo, including the teachings of Spider Woman, one of the First People. Photo by Thomas F. King.

mangers continue to grapple with in considering traditional cultural properties in the Section 106 process. First, the people to whom traditional cultural properties hold cultural significance are generally the only people with the expertise to identify them, determine if and how they may be affected, and determine whether or not treatment is necessary and recommend that treatment. Second, adverse effects to most traditional cultural properties can't be "mitigated" in the same way effects to archeological sites or historic buildings can, so treatment of traditional cultural properties must be part of project design and planning, not something to be taken care of during the Section 106 compliance process after project designs are in place. Addressing these issues has two implications: 1) the people to whom traditional cultural properties are significant must be an integral part of the planning and management process, and 2) incorporation of traditional cultural properties into the planning and management process must begin much earlier than it usually does when managers rely entirely on the Section 106 compliance as a means of dealing with them.

### Alternative Approaches

NEPA 1: An example of how identification, evaluation and treatment of traditional cultural properties can be either a "problem" encountered in the context of Section 106 or, conversely, part of the project design and planning process, is the current planning for a large transmission line project crossing the Navajo Reservation. As part of its responsibilities under the National Environmental Policy Act (NEPA), the lead agency is preparing an environmental impact statement (EIS), designed to select a preferred alternative from a variety of potential transmission line routes. The planning process for development of the EIS includes five major phases:

- (1) Regional Studies/Alternatives Review
- (2) EIS/Corridor Studies
- (3) EIS Preparation
- (4) Siting Process
- (5) Preconstruction Activities

After all of this EIS work is completed "preconstruction activities" may commence. The last task in this last phase, after completion of all of the rest of the project planning, is "cultural surveys." While general environmental data collection and public scoping begin in June 1993, preconstruction activities are scheduled to begin after the record of decision in late 1995 or 1996.

The practical realities of this process are that Navajos will be asked to identify traditional cultural properties after planning is completed, when few design options remain. Cultural resource professionals, in the context of Section 106, will have to try to determine the boundaries of traditional cultural properties, evaluate their National Register eligibility and potential effects to them and arrive at treatment measures, all the while trying to keep the information confidential. All of this occurs after all of the critical planning and design work has been finalized, when it will be virtually impossible to make significant design change that might be required to protect traditional cultural properties.

The overall project planning process in this case perpetuates the practical problems so often encountered with incorporating traditional cultural properties in the Section 106 process. From our perspective, these problems can be avoided by restructuring the planning process recognizing consideration of impacts to traditional cultural properties can often not simply be "mitigated" as they routinely can be for archeological sites at the late, "preconstruction activities" stage.

Impacts to archeological sites are generally considered to be those that directly disturb archeological deposits or at least that occur within site boundaries. Whereas avoiding direct construction impacts to an archeological site

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may ensure that it is not affected in terms of 36 CFR Part 800, avoiding direct project impacts may not be sufficient to ensure that traditional cultural properties are not affected. For example, the limits of the "area of potential effect" may extend far beyond the artificial boundaries of a traditional cultural property administratively established to meet the needs of the cultural resources manager. Further, the specialized categories of effect defined in 36 CFR Part 800 may not encompass all the potential effects to a traditional cultural property. The mere act of identifying certain places to outsiders may be culturally inappropriate, robbing a place of its power and causing unavoidable adverse impacts.

These problems are likely to prove fairly intractable as long as the planning process focuses exclusively on individual undertakings and as long as the people who hold the knowledge about the traditional cultural properties and what constitutes effects to them are not an integral part of the planning process. In the example of the transmission line planning process, we think that the identification of traditional cultural properties could be successfully integrated into the earliest stages of the EIS planning process, such as the public scoping periods, so that traditional cultural properties can be thought of as components of the total landscape, rather than isolated spots that must be "dealt with" as a final obstacle to construction. Through long range, integrated landscape planning, knowledgeable Navajos may help design the project to have the least impact on places of cultural significance without having to divulge specific confidential information and without having to resort to artificial boundaries. They may also aid cultural resources managers in decision making about significance, effects, and treatment.

NEPA 2: An example of how cooperative planning can work is the Navajo Nation's (and six other tribes') current involvement in the development of an extremely large and complex EIS for the operation of Glen Canyon Dam on the Colorado River in northeastern Arizona. The

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operation of the dam has and continues to affect all of the resources in the 300-mile-length of the Colorado River corridor in the Grand Canyon. The Bureau of Reclamation (BOR), the project's lead federal agency, invited all potentially concerned tribes into the EIS development process as Cooperating Agencies pursuant to NEPA implementing regulations. BOR entered into direct contracts with each tribe to research their own traditional cultural properties concerns. Each tribe has direct input into the EIS development, providing management recommendations that help protect the Colorado River corridor, including specific traditional cultural properties within the larger sacred landscape, without having to divulge confidential information. The tribes' traditional cultural properties concerns are then incorporated into a programmatic agreement for compliance with Section 106 of NHPA.

We realize that neither Section 106 nor the NEPA compliance/ planning process provide the ideal context for holistic landscape or ecosystem planning and/or management. Both are designed to deal with specific, individual projects and the more-or-less isolated zones in which impacts are defined as likely to occur. Although NEPA compliance entails consideration of a wide range of natural and cultural resources, it is still an approach that is directly linked to consideration of specific undertakings. Nonetheless, it provides a mechanism through which consideration of traditional cultural properties, along with the natural resources and larger landscape of which they are a part, may be incorporated into project planning and design long before potential impacts become unavoidable.

### **General Land Management Planning**

Agencies can take this "proactive" position beyond the individual undertaking, and begin incorporating direct consultation with Indian tribes and traditional cultural landscape planning at the annual and/or general management planning level. This is the approach we are advocating with the U.S. Forest Service and the National Park Service; both situations show great potential. The Rocky Mountain Region of the

U.S. Forest Service formed an inter-tribal advisory committee to advise them on long-range planning. We recently recommended a similar arrangement to another U.S. Forest Service District, from whom the Navajo Nation currently receives dozens of individual requests for consultation on specific undertakings each year, ranging from timber sales to installation of picnic areas. Similarly, Grand Canyon National Park has formed a Native American Work Group to assist in development of their General Management Plan, so that the tribe has a role in long-range, comprehensive planning prior to the level of individual undertakings. Problems with traditional cultural properties arise when the people knowledgeable about them are asked to respond to requests for information after development plans are already in place. Interacting with tribes as partners in the agencies' planning processes avoids these traps for the tribes, the agencies, and the places that must be preserved.

### **Conclusion**

We believe that traditional cultural properties fit into a larger trend in cultural resource management and environmental planning more generally which is leading toward efforts that take a broader approach to planning and resources impact assessment. This broader context is based on landscapes or ecosystems rather than artificially-defined impact zones derived from narrow project based criteria and artificially bounded cultural resources. Such an approach is emerging from various disciplines active in environmental planning. We are convinced that this is the only realistic approach to meaningful consideration of traditional cultural properties and the cultural landscapes of which they are integral parts, just as this methodology is the only approach that genuinely deals with the real issues of environmental management.

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